

No. 14/13/87-6Lab/705.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of T.C. Haryana, Chandigarh versus Om Parkash.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 368 of 89

between

SHRI OM PARKASH, S/O SHRI CHHOTU RAM, C/O SHRI P. K. GUPTA, LABOUR LAW ADVISER
557/4, JACABPURA GURGAON

and

THE MANAGEMENT OF (1) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH (2) DEPUTY TRANSPORT CONTROLLER, HARYANA ROADWAYS ENGINEERING CORPORATION LTD., GURGAON.

Present :

Shri M. P. Gupta, for the workman.

Shri R. P. Dagar, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court for adjudication,—*vide* Haryana Government Labour Department endorsement number 43164—70, dated 12th October, 1989 :—

Whether termination of services of Shri Om Parkash Assistant Carpenter is legal and just? If not, to what relief is he entitled?

2. Briefly put the facts contained in the claim statement are that the petitioner was appointed as Assistant Carpenter by the respondent and consequent upon the formation of the Engineering Corporation, the petitioner was transferred to the said Corporation on 27th November, 1987. Services of the petitioner were terminated on 1st May, 1989 and the order of termination has been challenged being illegal, void on the ground that the order of punishment is vague, unreasoned and no speaking order had been passed by the authority. It was pleaded that chargesheet was vague and the chargesheet did not contain list of witnesses, statement of allegations and the Enquiry Officer was not validly appointed. The enquiry conducted by the Enquiry Officer has also been challenged on the ground that day to day enquiry proceedings were not supplied and the correct procedure was not followed. It was pleaded that there was no material on the file to show that the petitioner was absent on 2nd June, 1988 and the report of the Enquiry Officer was passed on hearsay evidence and the Enquiry Officer did not give any reason for disbelieving the medical certificate of the Civil Hospital. It was also pleaded that punishment of termination of service was disproportionate to the gravity of the charges.

3. Upon notice, respondent appeared and filed their written statement and took up the plea that the petition was not maintainable and the services of the petitioner were terminated after initiating enquiry proceedings in accordance with the rules and the termination order runs into two pages and it is self speaking. It was pleaded that statement of the witnesses during the enquiry had been recorded after giving full opportunity to the petitioner and in his presence. It was pleaded that the petitioner remained absent on 2nd June, 1988 and 3rd June, 1988 without informing the management and he was suspended on 3rd June, 1988. It was pleaded that they had got the medical certificate checked up from the Chief Medical Officer, Gurgaon, who verified that the outdoor ticket number 33531, dated 3rd June, 1988 was not issued to the petitioner and the certificate was found to be fake.

4. In the replication, the contents of the written statement were controverted while those of the claim statement were reiterated.

5. On the pleadings of the parties, following issue was framed on 6th July, 1990 :—

Whether termination of services of Shri Om Parkash Assistant Carpenter is legal and just? If not, to what relief is he entitled?

6. I have heard the authorised representatives of the parties. My finding on the issue framed is as under :—

7. The management has examined K.D. Sharma, Works Manager, who had conducted the enquiry against the petitioner. He proved the copy of the chargesheet Ex. M1. He stated that he was appointed Enquiry Officer,—*vide* letter Ex. M2 and petitioner had submitted his reply Ex. M3 and proved the enquiry proceedings Ex. M5 and his report Ex. M6. In the cross-examination, he admitted that the medical certificate had been produced before him but he corrected himself and stated that the outdoor ticket was produced but it was not produced in the enquiry and he had not given the list of witnesses and the documents to the petitioner. He stated that he had given the copies of the enquiry proceedings whenever it was demanded by the petitioner, but he did not handover the copies of the proceedings himself. He stated that he could not recall whether leave application was attached in the personal file, but the management did not produce any such application before him, nor management had produced any record to prove that the petitioner was habitual absentee.

8. Shri Norang Singh Rana MW2 brought the transfer file of the petitioner and deposed that complaint Ex. M8 was received and the petitioner was chargedheeted and regular departmental enquiry was conducted and after receiving the report of the Enquiry Officer, show cause notice was given to the petitioner and the petitioner had filed his reply and after giving an opportunity of personal hearing, termination order was passed. He stated that letter was also written to the Chief Medical Officer, who had given its reply. He stated that they had not got any case registered against the petitioner for committing forgery.

9. On the other hand, petitioner has stepped into the witness box as WW1. Besides deposing about his year of appointment and his consequent transfer to the Corporation, he deposed that his services were terminated on 1st May, 1989 and at that time, he was drawing a salary of Rs. 1,700 p.m. He explained that he was not feeling well and he had gone to the hospital, where he had been advised rest. He stated that full opportunity had not been given to him during the enquiry. He stated that he had come for his duty on 3rd June, 1988, but since he had developed temperature he had asked Mangat Ram for leave and had gone to the hospital. Madan Lal WW2 stated that on 3rd June, 1988 petitioner had come for his duty and than he developed fever and he had asked the Forman for leave, which was refused and thereafter, the petitioner left the office.

10. The termination order and the report of the Enquiry Officer have been challenged on three points namely that the report made by the Enquiry Officer was not a speaking order, nor any reason was given, nor it was based on legal evidence and secondly regarding gravity of the punishment and thirdly regarding non supply of copies of statements, proceedings during the enquiry.

11. Dealing with the last point first, the Enquiry Officer did not hand over the copies of the proceedings. According to him, he had only given copy as and when they were asked for by the petitioner. It has been held in *Hans Raj Gupta versus State of Punjab* 1992 (1) SLR page 146, that once a document was being relied upon, it was incumbent to supply the copy of the same and it was incumbent on the authority to do so. It has been held by the Hon'ble Supreme Court in *Kashinath Dikshita versus Union of India and others*, AIR 1986 S.C. page 2118, that where copies of statement of witnesses and copies of documents relied upon by the disciplinary authority were not supplied, the order of dismissal was held to be violative of Article 33(2) of the Constitution of India.

12. A perusal of the enquiry report shows that no reason what-so-ever has been given by the Enquiry Officer. The Enquiry Officer did not bother to give any reasoning which was the minimum expected of him. The report runs over one page and in 8 paragraphs. The first seven paragraphs deal with the allegations, the dates on which reply was filed and the evidence was recorded and the number of the witnesses examined by the management and the petitioner. It is only in the last paragraph where Enquiry Officer has given his finding which runs into three lines. It says that keeping into view the statements of the witnesses and Om Parkash Carpenter, he (the E.O) had come to the conclusion that the allegations made in the chargesheet were found to be correct.

13. It is well settled that disciplinary enquiry has to be a quasi judicial enquiry and the principles of natural justice have to be kept into view and the Enquiry Officer has to act judicially. In this case, the Enquiry Officer did not apply his mind to the evidence. Save of setting out names of the witnesses, he did not discuss the evidence. He merely recorded his *ipsa dixit* that the charges were proved. He did not assign a single reason as to why the evidence produced by the petitioner did not appeal to him or was not considered not credit-worthy. He did not give any reason as to why he preferred the evidence, which was produced by the management. It clearly discloses the total non-application of mind. Further termination order was passed stating that the out door ticket presented

by the petitioner was fake. This allegation had not been made against the petitioner and the authority could not rely upon any evidence, which was not introduced before the Enquiry Officer. In this case, there is no co-relation between the evidence produced by the parties, nor there is sufficient evidence and infact, it can be said that there was no enquiry report at all and the termination order passed on the report is unsustainable.

14. Since the order of termination of service is unsustainable, it would not be necessary to go into the question of punishment i.e. whether the punishment of termination of service was disproportionate to the charges against the employee, where absence was for only two days without leave. In view of the above, petitioner is entitled to reinstatement with continuity of service and full back wages. Reference is answered and returned accordingly with no order as to costs.

ANITA CHAUDHARY,

The 9-9-1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1453, dated the 30th September, 1994.

Forwarded (four copies), to the 'Secretary to Government, Haryana,' Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act, 1947.

The 1st August, 1994.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 24th October, 1994

No. 14/13/87-6Lab/746.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of G. M., H.R., Bhiwani, *versus* Kapoor Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 216 of 1993

Date of receipt .. 18-10-93

Date of decision .. 1-10-94

SHRI KAPOOR SINGH, DRIVER, S/O LAHRI SINGH, VILLAGE PIPOSA,
TEHSIL BAWANI KHERA, BHIWANI

..Applicant

versus

GENERAL MANAGER, HARYANA ROADWAYS, BHIWANI

..Respondent/Management

Present :

Shri Kapoor Singh, alongwith Shri S. K. Sharma, A. R.
Shri Jagdish Pawar, ADA, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Kapoor Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. 38473—98, dated the 6th October, 1993 :—

Whether termination of services of Kapoor Singh is justified and in order ? If not, to what relief is he entitled ?

2. The case of the petitioner is that his services were terminated by the management on 8th October, 1992, in an illegal manner.

3. The case was being contested, when the parties arrived at an amicable settlement and the statement of the parties were recorded on 30th September, 1994.

4. In view of the statements of the parties recorded on 30th September, 1994, the management agreed to take the worker on duty within a period of ten days giving him benefit of continuity of service. The petitioner has given up his claim of back wages. In these circumstances, no dispute survives for adjudication. The reference is answered accordingly, with no order as to costs. The parties shall be bound by their statements recorded on 30th September, 1994.

The 1st October 1994.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2185, dated the 3rd October, 1994.

A copy, with spare copy, is forwarded to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

The 24th October, 1994

No. 14/13/87-6Lab./747.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum Labour Court, Hisar in respect of the dispute between the workmen and the management of M/s. Goyal Synthetic, Industrial Area, Bhiwani, *versus* Roshan Lal.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, HISAR

Reference No. 222 of 1992

Date of receipt .. 4-9-92

Date of decision .. 1-10-94

SHRI ROSHAN LAL, SON OF RULIA RAM, DADRI GATE, PANI KI TANKI,
PANNU RAM KI DAIRY, BHIWANI

.. *Applicant.*

versus

GOYAL SYNTHETIC, PLOT NO. 1, INDUSTRIAL AREA, SECTOR-21, BHIWANI
.. *Respondent-Management.*

Present :

Shri Roshan, Lal, in person

Shri Rajesh Goyal, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Roshan Lal and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Bwn/78-92/40486—91, dated the 31st August, 1992 :—

Whether termination of services of Roshan Lal is justified and in order ? If not, to what relief is he entitled ?

2. The case of the petitioner is that his services were terminated by the management in an illegal manner.

3. The case was being contested when on 14th September, 1994, the parties arrived at an amicable settlement. The statements of the parties were recorded.

4. In view of the statements of the parties recorded on 14th September, 1994, the petitioner has received Rs. 1250/- in full and final settlement of his claim. He also given up his claim of re-instatement. In these circumstances, no dispute survives for adjudication. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 1st October, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2186, dated 3rd October, 1994.

A copy, with spare copy is forwarded to the Financial Commissioner, and Secretary to Government, Haryana, Labour Employment Department, Chandigarh, for information and necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

The 28th October, 1994

No. 14/13/87-6 Lab./774.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of dispute between the workman and the management of M/s. The Haryana State Seed Certification Agency Umri District Kurukshetra versus Shakti Singh.

IN THE COURT OF SHRI S.R. BANSAL, (ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 249 of 1988

WORKMAN SHRI SHAKTI SINGH SON OF SHRI OM PARKASH, VILLAGE AND POST OFFICE PHERAL, DISTRICT KURUKSHETRA AND THE MANAGEMENT SEED CERTIFICATION OFFICER, THE HARYANA STATE SEED CERTIFICATION AGENCY, UMRI, DISTRICT KURUKSHETRA.

Present:

None for the workman.

MR. Shri P. S. Sharma.

AWARD

The Hon'ble Governor of Haryana has made the following reference to this court for adjudication: —

Whether the termination of the services of Shri Shakti Singh is valid and justified ? If not so, to what relief is he entitled ?

On receipt of the reference, notices were issued to the workman as well as to the management. The management filed written statement to the claim statement and the following issues were framed:—

(1) Whether the impugned termination of services of the workman is invalid? OPW

- (2) Whether the claim statement is bad due to non-joinder of necessary parties for the reasons stated in preliminary objection No. 1 of the WS?OPM
- (3) Whether the workman is estopped by his act and conduct from filing the claim? OPM
- (4) Whether the claim is not maintainable in the present form? OPM
- (5) Relief.

After that, the case was fixed for workman's evidence. On 18th August, 1994 the workman did not appear and *ex parte* proceedings were taken against the workman. The management was called upon to lead *ex parte* evidence. The management has also not chosen to lead any evidence.

It was for the workman to prove that his termination from services was illegal. Since there is no evidence on the file to substantiate the allegations of the workman, this reference is bound to be answered against the workman. I order accordingly.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1639, dated the 6th October, 1994.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

The 15th November, 1994

No. 14/13/87-6-Lab./787.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the Executive Engineer, Agri. Marketing Board, Hr. Kaithal *versus* Hawa Singh.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 12/93

WORKMAN SHRI HAWA SINGH, SON OF SHRI LILU RAM, VILLAGE AND POST OFFICE BHANA, DISTRICT KURUKSHETRA AND EXECUTIVE ENGINEER, AGRI-CULTURE MARKETING BOARD, HARYANA, KAITHAL

Present:

None for the workman.

Mr. Shri Anil Kumar Garg, S.D.O.

AWARD

The Hon'ble Governor of Haryana has made the following reference to this court for adjudication.—

"Whether the termination of the services of Shri Hawa Singh is valid and justified? If not, so, to what relief is he entitled?"

On receipt of the reference notices were issued. The management submitted written statement to the claim statement and the following issues were framed :—

1. Whether the termination of services of Shri Hawa Singh, workman is illegal. If so to what relief is he entitled ? OPW
2. Whether the claim statement is not maintainable as alleged ? OPM
3. Relief.

After that the case was fixed for workman's evidence. Workman's representative pleaded no instructions on behalf of the workman. Hence *ex parte* proceedings are taken against the workman and management was called upon to lead *ex parte* evidence. The management has also not chosen to lead any evidence.

It was for the workman to prove his termination from services was illegal. Since there is no evidence on the file to substantiate the allegations of the workman, this reference is bound to be answered against the workman. I order accordingly.

Dated : The 4th October, 1994

S. R. BANSAL,
Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1631, dated the 6th October, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

The 21st October, 1994

No. 14/13/87-6Lab./710.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/S Max Flow Pumps Pvt. Ltd., Gurgaon *versus* Ram Kishan.

**IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON**

Reference No. 42 of 1990

between

RAM KISHAN SON OF SHRI CHANDER SINGH C/O SHRI SHARDHA NAND, GENERAL
SECRETARY, AITUC OFFICE 214/4 MARLA, GURGAON
and

THE MANAGEMENT OF M/S. MAX FLOW PUMPS PVT. LTD. 1/5, MANESAR ROAD,
GURGAON.

Present :

Shri Shardha Nand for the workman.

Shri G.C. Walesha for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (In short "the Act"), Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication, *vide* Haryana Government Ernst. No. 6363-68 dated 15th February, 1990: —

Whether services of Shri Ram Kishan have been terminated or he has left his job by remaining absent from duty? To what relief is he entitled on the decision of this issue?

2. The facts given in the claim statement are that the petitioner Ram Kishan was working as a Drillman with the respondent since 1st June, 1981 and was drawing wages @ Rs. 695 p.m. The petitioner fell ill on 9th June, 1989 and was on medical leave till 27th June, 1989, and intimation regarding his absence had been sent to the management and when the petitioner reported for duty on 28th June, 1989 he produced his medical fitness certificate, but the respondent did not allow him to join his duties, not any retrenchment compensation was paid.

3. The respondent had filed their written statement and they had taken up the plea that services had never been terminated and the case was not covered under section 2A of the I.D. Act. It was pleaded that the workman started absenting from duty with effect from 9th June, 1989 and according to clause 13(d) of the Certified Standing Orders of the company if the workman remained absent from duty without prior permission/sanction of leave from the management for more than 10 consecutive days, he would lose his place. It was pleaded that on account of long absence the management dropped his name from the muster roll. The management then received notice from the workman through the Conciliation Officer and the management as a gesture of goodwill requested the Conciliation Officer to direct the workman to report for duty, but the workman refused to report for duty. The matter was again fixed for conciliation before the Deputy Labour Commissioner, where again an offer was made by the management and the workman instead of joining his duties wrote a letter that since his case was pending before the Labour Court, he would see the management in the Labour Court only. It was also pleaded that direction be given to the workman to report for duty immediately, otherwise management would not pay any back wages on the principle of "no work no pay".

4. In the replication, the contents of the written statement have been controverted and it was pleaded that the management had themselves given in writing on 31st August, 1989 before the Deputy Labour Commissioner, Sonepat that they had removed the name of the petitioner from the muster roll.

5. Before the issues were framed in this case, efforts were made to get matter settled. The Authorised Representative for the management made a statement in the Court that they were still ready to allow the workman to join the service and an offer was given to him earlier also, but he had refused. The workman thereafter made a statement in the Court that he was ready to join the service in case he was paid wages according to the Minimum Wages Act. The Presiding Officer then passed an order on 4th January, 1991 directing the workman to join duty from 5th January, 1991 and it was ordered that proceeding regarding back wages would be decided in accordance with law. On 15th January 1991, the representatives of the parties deposed before the Court that the workman had joined the duty on 5th January, 1991. Thereafter, following issue was framed on 15th January, 1991:—

Whether services of Shri Ram Kishan have been terminated or he has left his job by remaining absent from duty? To what relief is he entitled on the decision of this issue?

6. I have heard the authorised representatives of the parties and have gone through the evidence on the file. My finding on the issue is as under:—

7. The management was called upon to lead their evidence first and they have examined Sohan Lal, Staff Assistant as MW1, who deposed that the petitioner was appointed as Driver on 16th July, 1981. He proved the appointment letter Ex. M1. He stated that according to the terms and conditions contained in clause 7 of the appointment letter, services of the workman were to be automatically terminated, if he remained absent for seven days without applying for leave. He produced on record Ex. M2, copy of the certified standing order and the covering letter Ex. M3. He further deposed that the workman had been absenting himself on various occasion, therefore, he was issued show cause notices Ex. M4 to Ex. M7 and reply was filed. He further deposed that the workman had absented himself from 9th June, 1989 and his name was removed from the muster roll on 23rd June, 1989 and the registered letter was also sent calling upon him to report for duty, but the registered A.D. was received back with the report that the workman was not residing at the given address. He produced on record registered letter Ex. M9 and further deposed that a sum of Rs. 705.00 which was due to the workman had been sent, —*vide* money order receipt Ex. M10. He stated that workman filed demand notice before the Labour Officer on 4th July, 1989 and again an offer was made to the workman to report for duty but the workman was not keen to join his duty and the same offer was made before the Deputy Labour Commissioner and letters were sent to the workman, who had given his reply Ex. M-14. He stated that the workman finally reported for duty on 5th January, 1991 under the orders of the Court.

8. On the other hand the workman stepped into the witness box as WW1 and deposed that his services were illegally terminated on 28th June 1995. He stated that he had fallen ill and he had sent intimation to the management through his brother and had also produced his medical fitness certificate when he reported for duty. He produced on file Ex. WW1 medical certificate. He stated that he had fallen ill at village Bharota in District Sonipat. He stated that he had not received any notice from the management asking him to report for duty. He admitted that he had received notice Ex. WW1/4 but he did not report for duty as his matter had been referred to the Labour Court.

9. Pushpa Rani Steno to the Labour Officer WW2 deposed that demand notice was received in their office on 4th July 1989 and the parties were present on all the three occasions and compromise could not be effected and report in this regard was sent which is Ex. WW2/1. A.D. Kolhatakar, Legal Advisor was also examined by the workman who deposed that he was Legal Advisor of the management and had appeared before the Labour Officer and they had made a statement that they were ready to take the workman on duty but the petitioner had refused to join.

10. In this reference this Court had been called upon to report whether the workman had remained absent and had left the job or his services were terminated and whether he was entitled to any relief. During the proceedings before the issue was framed in this case an offer was made by the management which was accepted by the workman and the workman is now working with the respondent with effect from 5th January 1991. The question which is now left to be examined is as to whether his services were terminated or the workman had abandoned his job and whether he would be entitled to back wages.

11. Right from the very beginning the management has been making offers to the workman to report for duty and they had been sending notices to the workman some of which have been placed on the file. The management has also produced on record notice Ex. M5. which shows that the workman was absent from his duty very often and the petitioner has admitted in his reply Ex. M8 that he had remain absent but had justified his absence on account of his family problems.

12. Certified Standing Orders provide for automatic termination in case the workman remains absent for a period of ten days without leave. According to the workman he had fallen sick but intimation regarding his absence had been sent through his brother to the management but no such record had been produced on the file nor the workman had summoned any record from the management in support of his contention. It has been admitted by the workman that he did not report for duty from 9th June 1989 till 27th June 1989. The management had been sending show cause notice to the workman time and again. Ex. M4 is the shown cause notice sent on 11th September 1987. Ex. M5 is another notice sent on 25th April 1988. Ex. M-6 pertains to the absence of the workman in May and June 1988 while notice Ex. M7 deals with the absence of the workman during the months of July August and September 1988. Ex. M8 is the reply sent to the show cause notice wherein it had been admitted that the workman had been absenting from his work and the reasons given there in his family problem. but he had at the same time requested the management to take a lenient view and that he would attend to his work regularly. After his absence again in June 1989 a registered notice Ex. M9 was sent and a report was received that the workman does not reside at the given address. The registered envelope had been opened today and I find that the envelope contains notice sent on 23rd June 1989 and reference has been made to clause 13(d) of the Certified Standing Orders that since the workman had remained absent for more than ten consecutive days. therefore it was presumed that the workman had left his service on his own. Money order receipt had also been placed on the file to show that the amount which was due had been sent. Ex. M11 is the reply which was submitted before the Deputy Labour Commissioner Sonipat where the period during which the workman remained absent has been given and an offer that they were ready to take the workman on duty in case he produced the medical certificate and an undertaking that he would not be absent from duty without prior sanction of leave from the management. The above facts go to show that this is the case of abandonment of job. The workman did not apply for any leave nor he has been able to produce any material on file that he had sent his leave application. The Certified Standing Orders provide for automatic termination in case of absence from duty without permission or sanction of leave for more than ten consecutive days. Since the workman did not report for duty, nor had applied for leave the order of termination was passed on the presumption that the workman had abandoned his job. It was held in Free Wheel India Ltd. Versus State

of Haryana and others, 1984 I LLN page 779 where certified standing orders of the company provide for automatic termination of service for absence without leave for eight consecutive days or more and that workman so absenting would be deemed to have left the service of the company. In Kshetriya Shri Gandhi Ashram, Magahar Versus Ram Samujh Maurya and others, 1990 (61) FLR page 1 that in case "where services stand terminated automatically principles of retrenchment cannot be applied. It was further held that abandonment of Job is one such instance if the workman himself willingly abandoned his job it cannot be said that he has been retrenched and the question of paying compensation in these circumstances does not arise". It is thus held that the petitioner had abandoned his job without leave and it was not a case of retrenchment and the management had rightly removed the name of the employee from the muster roll. Consequently petitioner is not entitled to any relief. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 27th September 1994

Presiding Officer
Industrial Tribunal-cum-Labour Court
Gurgaon.

Endst. No. 1449, Dated the 30th September, 1994.

Forwarded (four copies) to the Secretary to Government Haryana Labour & Employment Departments under Section 15 of the Industrial Disputes Act 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 21st October, 1994

No. 14/13/87-6Lab./711.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Gabriel India Pvt. Ltd., Delhi versus Birender Singh.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 162 of 1990

between

BIRENDER SINGH S/O SHRI RAMESHWAR DAYAL C/O SHRI SHARDA NAND, GENERAL SECRETARY, GURGAON, WORKERS UNION, AITUC OFFICE 214/4 MARIA GURGAON AND THE MANAGEMENT OF M/S. GABRIEL INDIA, LTD., DELHI-JAIPUR ROAD, CHANDER NAGAR, INDUSTRIAL AREA, GURGAON.

Present :

Shri Shardha Nand for the workman.

Shri M. P. Gupta for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department endorsement No. 2132-37, dated the 17th January, 1990:—

Whether services of Shri Birender Singh have been terminated or he has left his job by tendering resignation? To what relief is he entitled to on the decision of this issue?

2. The facts as given out in the claim statement are that the petitioner was employed as a Machinist on 16th August, 1988 by the management on monthly salary of Rs. 675 p. m. On 15th June, 1989, the petitioner was called in the office by the management and was forcibly made to sign the resignation letter and was not paid any compensation and was turned out of the establishment. On 16th June, 1989, when the petitioner narrated the incident to his colleague, the employees union went on strike, but the management failed to respond. The petitioner has sought reinstatement with full back wages.

3. Upon notice, the management appeared and filed their written statement and took up the plea that the workman had submitted his resignation which was accepted and communicated to the employee and service certificate had been issued to the workman and services of the workman had not been terminated and the reference was bad in law, as the workman had not been terminated, but he had resigned from duty. It was admitted that the petitioner was drawing salary of Rs. 675 p. m. It was pleaded that since the petitioner had resigned on his own, therefore, he was not entitled to any compensation.

4. In the replication, the petitioner took up the plea that he was coerced to sign the resignation letter.

5. On the pleadings of the parties, following issues were framed on 19th March, 1991:—

- (1) Whether the reference is bad in law as per preliminary objection No. 1 of the written statement ?
- (2) Whether the claim is vague as per preliminary objection No. 3 of the written statement ?
- (3) Whether services of Shri Birinder Singh have been terminated or he has left his job by tendering resignation ? To what relief is he entitled on the decision of this issue ?

5-A. I have heard authorised representatives of the parties and have gone through the evidence on the file. My findings on the issues are as under :—

Issues No. 1 and 2 :

6. These issues were not pressed before me, therefore, no finding is called for.

Issue No. 3 :

7. The management has examined Sanjiv Malhotra, Production Manager, who deposed that the petitioner was working with the management in the production department under his supervision and on 15th June, 1989, he came up and expressed his desire to submit his resignation and the copy of the same was Ex. M 1 and he had accepted the resignation and had forwarded the same to the Manufacturing Manager and the workman had submitted application for getting his dues cleared and thereafter, service certificate Ex. M 3 was issued. He stated that resignation was submitted voluntary by the workman. It was denied that at the time of the alleged resignation, workers had left the factory but the witness explained that the workers had not left the factory but were in the process of collecting their belongings. It was denied that the workers had gone on strike on the next day on account of the petitioner's forced resignation, but explained that the strike was for some other reason.

8. The petitioner has stepped in the witness box as WW 1. He stated that he was forced to sign the resignation letter and he was in continuous service from 16th August, 1988 to 15th June, 1989 and he was called to the office by the Personal Officer on the pretext of handing over confirmation letter and was forced to write his resignation letter and the union had gone on strike the very next day and the strike had lasted for about two months.

9. Rajinder Singh WW 2 stated that the union had gone on strike the next day after having come to know of the resignation letter taken by the management. He stated that settlement had been arrived at and their salaries were increased. He stated that they had given a demand notice for raising their pay scale.

10. Similar statements have been made by the Sube Singh, General Secretary of the union WW 3 and Sunil Dutt WW 4. Both of them stated that the petitioner had been forced to submit his resignation and the workers had gone on strike the very next day.

11. It was argued on behalf of the management that the petitioner had taken up the plea that he was forced to sign the resignation letter, but it has been admitted by him that the resignation letter Ex. M 1 and Ex. M 2 were in his hand. It was argued that if the resignation was given on account of undue influence, coercion, fraud, mis-representation or mistake, then the pleadings must particularly state as to how resignation was taken. It was argued that the column statement is silent and the particulars have not been given and it was the petitioner who was to prove that the resignation was not voluntary.

12. On the other hand, it was argued on behalf of the petitioner that the very fact that the workers had gone on strike the very next day goes to show that the resignation letter had been forced upon the petitioner and that it had not been signed voluntary by the petitioner. It was pointed that on the 16th June, 1989, General Secretary of the Union had sent the demand notice to the Labour Inspector against the management,—*vide* Ex. W 2 and a resolution had been passed by the worker's union.

13. To repel the argument, it was vehemently argued on behalf of the management that once it is admitted by the petitioner that the resignation Ex. M 1 was in his hand, therefore, it was the petitioner, who was to prove and service certificate Ex. M 3 had also been given to the employee and intimation had also been sent to the ESI department and a copy of the same was Ex. M 7.

14. Whether the resignation was voluntary was given under coercion, undue influence, mistake etc, it was the petitioner who was to specifically state the particulars, but in the present case, the petitioner has failed to plead the particulars and merely saying that the signatures were obtained by the coercion or undue influence are not enough. It has come in evidence that the workers had gone on strike the very next day but the copy of the settlement was not produced on the file by the petitioner. It was for him to prove that the strike was in protest against the resignation letter taken from him. The petitioner's own witnesses have stated that their demand was regarding raise in salary and accordingly, the management had agreed after the workers were on strike for nearly two months. This goes to show that the strike was not on account of the resignation letter, but the workers had been demanding a raise in their salary. It would be pertinent to point out here that the demand notice had been sent by the petitioner only in August 1989 and it appears to be an after thought.

15. It has been held in a number of cases that where there is a voluntary resignation, then the management is not required to pay any compensation or notice pay. It is therefore, found that the resignation by the petitioner had been submitted on his own accord and no coercion or undue influence had been exercised upon him and it was voluntary and as such, the petitioner is not entitled to any compensation. The question is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1456, dated the 30th September, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Given to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

P. R. KAUSHIK,

Financial Commissioner and Secretary to Government, Haryana,
Labour and Employment Departments.